Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes   OPR, MNR

Introduction

This hearing dealt with an application by the landlord is for an order of possession for unpaid rent and utilities and a monetary order for unpaid rent and utilities. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This tenancy began January 1, 2010 with monthly rent of $800.00. On May 5, 2011 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The landlord testified that the tenant has not paid the rent for May or June 2011 and currently owes the landlord $1600.00 in unpaid rent. The landlord stated that the tenant has also refused to pay his portion of the utility bill and currently owes the landlord $235.00 in unpaid utilities. The landlord stated that when they went to get the May rent the tenant told them 'we're not going to pay' and that was when the landlord served the tenant with the notice to end tenancy.

The landlord stated that the city by-law enforcement had given him a warning letter as the tenant has been piling the household trash in the yard and not maintained the yard. The landlord stated that the city is holding off enforcement until the outcome of this hearing has been made known to the parties.

The tenant testified that he did not know about this hearing until two days ago when he found the notice of hearing on top of his fridge; the tenant maintains that the landlord is constantly entering the suite without notice. The tenant stated that the May 2011 rent was paid in cash by his roommates boyfriend after the landlord refused to accept a cheque for the May rent. The tenant stated that the trash in the yard has been there

since he moved in and that the landlord told him that he would come by with a truck to haul it to the dump but that he never has. The tenant maintained that the landlord has been continually looking for a way to evict the tenant.

Analysis

Based on the documentary evidence and testimony I find that the tenant was properly served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an order of possession.

As the rent for May and June 2011 has not been paid, I find that the landlord is entitled to a monetary order for $1600.00 in unpaid rent.

Based on the documentary evidence and testimony I find that the landlord is not entitled to a monetary order for unpaid utilities. The tenancy agreement signed by the landlord and tenant does not state what, if any portion of the utilities is to be paid by the tenant and only specifies the amount of rent to be paid monthly. Therefore this portion of the landlord's application is dismissed without leave to reapply.

Conclusion

I hereby grant the landlord an **Order of Possession**, effective **2 days** after service of the Order upon the tenant and all occupants. This Order must be served on the tenant and all occupants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim for $1600.00 in unpaid rent.

A monetary order in the amount of **$1600.00** has been issued to the landlord and a copy of it must be served on the tenant. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 3, 2011.

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Residential Tenancy Branch